

Planning Board Meeting Minutes
January 15, 2015

Attendance: Chairman Jeff Feenstra, John Hayden, Dave Edgerly, Mike Todd, Mike Price, Selectmen's Representative Jamie Thompson, Bill Meserve and Town Planner Clay Mitchell.

Chairman Feenstra called the meeting to order at 7:02pm

Continued Hearing-103 Piscassic Rd-Map 201 Lot 1 -2-lot subdivision

Attorney Kathryn Morin addressed the Board. She represents One Home Builders regarding the 103 Piscassic Road 2-lot subdivision. The subdivision application was completed and there was a glitch with one of the test pits which has been resolved. The applicant took the recommendation of getting outside reviews from Rockingham County Conservation District and has submitted those comments to the Board.

The lot lines did not change on the existing plan but there was an adjustment made to the common driveway which now cuts between two wetland areas on the existing woods road. The location of the common driveway has the least impact to the wetlands and buffers.

Historically, the lot is 2 parcels with a change of the lot lines. The plot is described in the deed as too separate parcels. The 2 new lots meet the dimensional requirements

Bill Meserve asked if the driveway location had changed since last month. Scott Cole from Beals Associates explained that the driveway was relocated and is now further to the east. The new plan does delineate the Hydric A and B soils as requested by Mr. Cuomo.

Steve Shope requested that Chairman Feenstra read the RCCD letter of review for the record. Jeff Feenstra read the letter. (see attached)

Steve Shope commented that the driveway did not comply with the ordinances in either location.

Scott Cole stated that the purpose of the filing of the conditional use permit is to allow the common driveway within the wetland buffer area.

Attorney Morin stated that a number of criteria must be met for the conditional use permit and Scott Cole has identified the required criteria in his letter of December 11, 2014. (see attached) Under the economic benefit provision; if other options are available to an applicant the conditional use permit is not allowed. The interpretation of economic benefit has nothing to do with this application being a business venture.

She added there is a distinction between wetlands and buffers. There is no reason to grant a permit to impact the wetlands but not the buffer. A road cannot be constructed without affecting the buffer.

Clay commented that the ordinances are confusing in that the conditional use permit allows for an impact to the wetlands but not the buffer. He suggested relying on Attorney Morin's experience with conditional use permits.

Attorney Morin suggested that the Board grant the conditional use permit where it is within their authority. It is logical to assume granting the permit to allow for the impact to wetlands, allows for the impact to the buffer area. The board should use a common sense perspective.

Abutter Steve Shope stated that the board needs to look at the ordinances we have now. The ordinance has separate regulations for buffers and wetlands. The proposed driveway is a 200 year old tote road which has not seen a vehicle in 17 years according to Steve.

Frank Catapano clarified that the existing woods road has not been in continuous use and will work fine for a driveway.

In Attorney Morin's opinion it is within the board's authority to grant the proposed driveway in the wetland buffer. In Steve Shope's opinion, the board does not have the authority to grant the proposed driveway in the buffer.

Attorney Morin stated the alternative would be to place the driveway through the wetlands, which they do not want to do.

Steve Shope added that there is a third option and that is to rebuild the house at the front of the lot (formerly Evans) in the same location. Mr. Shope also disagreed with the applicant's interpretation of economic gain and a conditional use permit can't be issued for economic gain.

Clay explained economic advantage using an example. If there is a more expensive way to cross the parcel; you may not use the less expensive manner if it is through a wetland. Economic advantage has to do with the location of the impact.

Frank Catapano added that the proposed location of the driveway is the least impact to the wetland; not the project overall. If they were to take a shorter or cheaper route to get to the buildable area that would be economic gain.

Mike Todd said it doesn't make sense; you must go through a buffer to get to the wetlands.

Economic gain described in the conditional use definition. It is important to look at section 7.9.2-the proposed construction is essential to the productive use of land not within the Wetlands Conservation District.

It was the consensus of the board to get a legal opinion from town counsel.

A motion was made by Mike Price and seconded by Bill Meserve to consult an attorney to review the conditional use permit for an impact to a buffer and guidance on economic benefit. All were in favor and the motion carried.

A motion was made by Bill Meserve and seconded by Jeff Feenstra to continue the hearing until next month. All were in favor and the motion carried.

Attorney Morin requested that she be notified of the board's decision regarding granting a conditional use permit after seeking legal counsel.

Zoning Amendments

The final zoning amendments were reviewed and voted on.

1. Section 1.5.1 Expiration of Variances, Special Exceptions and Relief from Administrative Decision. A motion was made by John Hayden and seconded by Mike Price to put forward the proposed change to allow for two years on the March ballot. All were in favor and the motion carried.
2. Section 6.1 Update FEMA Flood Insurance Rate Maps (FIRM). A motion was made by John Hayden and seconded by Mike Price to put forward the proposed change on the March ballot. All were in favor and the motion carried.
3. A motion was made by Mike Todd and seconded by Jeff Feenstra to adopt the provisions of 2009 BOCA codes. All were in favor and the proposed change shall be placed on the March ballot.
4. Section 10.6.1 Update Building Code provision to make lot size consistent with Table of Dimensional requirements. A motion was made by Bill Meserve and seconded by Mike Todd to place the proposed change on the March ballot. All were in favor.
5. A motion was made by Jeff Feenstra and seconded by John Hayden to update Planning Board Rules of Procedure adoption process in accordance with State Law. All were in favor and the proposed change shall be placed on the March ballot for a vote.

Halls Mill Road Subdivision-5 lot- Map 209 Lot 21

Attorney Ratigan reviewed the conditions of approval for the Halls Mill Road Subdivision and the proposed mylar for recording. He would like the following information added to the plan:

1. A note should be added to the plan stating that construction fences shall be installed to protect the "no disturb" buffer area.
2. A note needs to be added to the plan regarding the internal stone walls. Note #9 only addresses vegetation and stone walls within the right of way.

A motion was made by Mike Todd and seconded by Bill Meserve to allow Chairman Feenstra to sign the revised Halls Mill Road Subdivision mylar outside of a regularly scheduled meeting. All were in favor and the motion carried.

Master Plan- There was no update.

A motion was made by Dave Edgerly and seconded by Mike Todd to approve the December minutes. All were in favor and the minutes were approved.

Respectfully submitted,

Sue McKinnon